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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,564	04/19/2004	Richard Thiele JR.	THL-10002/29	3187

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EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3654

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/827,564

Applicant(s)

THIELE, RICHARD

Examiner

Esther O. Okezie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on 5/20/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1,3-6,11,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Duprey.
2. Re claim 1, Duprey discloses a scalloped scoop comprising: a scoop portion (12) having a width length and leading edge (14); and a plurality of concave scallops on the leading edge; and each scallop defining a segment of a circle; wherein the segments intersect at distinct forward points (see figs 1-3).

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3. Re claims 3-5, Duprey discloses semicircular scallops (32). Although the dimensions of the scallops are not disclosed, it appears the radius of the scallops is equal to or greater than  $d/2$  or  $d$ .
4. Re claim 6, the scallops are substantially identical (fig 1).
5. Re claim 11, the leading edge is attached to the scoop portion (fig 3).
6. Re claim 12, the leading edge and scoop are constructed of dissimilar materials (col. 2, lines 24-33, col. 3, lines 33-50; claims 4-6).
7. Claims 1,3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrison.
8. Re claim 1, Harrison discloses a scalloped scoop comprising: a scoop portion (3) having a width length and leading edge (figs 2 and 3); and a plurality of concave scallops on the leading edge ("The attachment comprises a plate 6, having its inner edge scalloped as at 7..."); and each scallop defining a segment of a circle; wherein the segments intersect at distinct forward points (see figs 1-3).
9. Re claims 3-5, Harrison discloses semicircular scallops (7). Although the dimensions of the scallops are not disclosed, it appears the radius of the scallops is equal to or greater than  $d/2$  or  $d$  (see fig 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, and 7,9,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duprey.

11. Re claim 2, Duprey discloses about 11-12 scallops, but does not disclose the width of the scoop being 6 to 24 inches. A standard scoop used as a dustpan is generally less than a foot long. It would have been obvious to one of ordinary skill in the art to construct the scoop of Duprey between 6 and 24 inches as this range is within the standard length of most dustpans and shovels.

12. Re claim 7,9,10, Duprey discloses the scoop used as a dustpan for loading waste. This scoop would inherently be capable of picking up snow, dirt and plants during gardening, or scraping ice.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duprey. Duprey does not disclose stiffening ribs. Johnson discloses a dustpan with reinforcing ribs (2a). It would have been obvious to one of ordinary skill in the art to modify the scoop of Duprey as taught Johnson by to include stiffening ribs in order to strengthen the frame of the scoop.

*in view of  
Johnson*

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection as described above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 137,001, US 5,014,434, GB 2,198,021 A.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO

  
DEAN J. KRAMER  
PRIMARY EXAMINER 8/8/05